

Order filed December 30, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

THOMAS A. REEZE,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellant.	)	of the Twelfth Judicial Circuit
	)	Will County, Illinois
	)	
v.	)	
	)	
ALL WORLD STORAGE, INC.,	)	
	)	Appeal No. 3-12-0981
Defendant-Appellee	)	Circuit No. 09-L-237
	)	
(Tammy L. Vinckus Wilkerson, Individually	)	
and as Agent of All World Storage, Inc., and	)	
Mark J. Rone, Individually and as Agent of	)	
All World Storage, Inc.,	)	Honorable
	)	Michael J. Powers,
Defendants.)	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices O'Brien and Schmidt concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Trial court should not have granted summary judgment to corporation where questions of fact exist regarding whether corporation's employees acted within the scope of their employment when they committed tortious acts against plaintiff.
- ¶ 2 Plaintiff Thomas A. Reeze filed a complaint against All World Storage, Inc., alleging that it was vicariously liable for the tortious acts of its agents, Tammy Vinckus and Mark Rone. All

World filed a motion for summary judgment, arguing that its agents were not acting within the scope of their employment when they committed tortious acts against Reeze. The trial court granted All World's motion for summary judgment. We reverse and remand.

¶ 3 In 2002, Reeze purchased a skid steer. Two years later, Reeze entered into an agreement with Walter Vinckus to store the skid steer at Vinckus' business, All World Storage, Inc., at no cost in exchange for Reeze allowing Vinckus to use the skid steer whenever he liked.

¶ 4 Walter Vinckus died on March 31, 2008. Immediately after his death, Vinckus' daughter, Tammy Vinckus, took over operations at All World. Tammy then hired her boyfriend, Mark Rone, to work at All World.

¶ 5 One day after Walter Vinckus' death, Reeze went to All World to retrieve the skid steer. Rone, Tammy Vinckus and Kim Sloane, another employee of All World, filed a criminal complaint against Reeze, alleging that Reeze stole the skid steer.

¶ 6 Officer James Sloup investigated the alleged theft. After his initial investigation, he concluded that the skid steer belonged to Reeze. When he discussed this with Rone, Rone said that he observed Reeze execute a bill of sale in 2005 that transferred ownership of the skid steer to Vinckus. On Tuesday, May 13, 2008, Rone faxed a bill of sale to Sloup. After that, Reeze was arrested, charged with theft and taken to the DuPage County Jail, where he stayed overnight. From there, Reeze was taken to the Will County Jail, where he remained for approximately two weeks.

¶ 7 Several months later, Sloup learned that the bill of sale Rone sent him was forged. As a result, the Will County State's Attorney's Office dismissed the charges against Reeze, and Rone was arrested and prosecuted for forgery. Rone pled guilty to a lesser charge of obstructing justice and admitted to providing a forged bill of sale to Sloup. Rone was sentenced to 60 days in jail and

ordered to pay Reeze \$9,000 in restitution.

¶ 8 Reeze filed a 12-count complaint against All World, Tammy Vinckus, individually and as an agent of All World, and Rone, individually and as an agent of All World, alleging malicious prosecution, false imprisonment, intentional infliction of emotional distress and civil conspiracy. The complaint alleged vicarious liability by All World, based on the actions of Vinckus and Rone.

¶ 9 All World filed a motion for summary judgment, arguing that Reeze failed to allege that Tammy and Rone were acting as agents of All World when they committed tortious acts against him. Reeze filed a response to the motion, to which he attached transcripts of his deposition, as well as the depositions of Tammy Vinckus, Mark Rone, Ross Gunter and James Sloan.

¶ 10 In his deposition, Reeze testified that he met Walter Vinckus when he "stored belongings at All World Storage." In 2004, Reeze agreed to store his skid steer at All World in exchange for allowing Vinckus to use it. Reeze saw Vinckus use the skid steer at All World for snow removal, "to move some stuff around," and "during the expansion of All World." Vinckus also used the skid steer for some cement work and to take "the trees down" behind his house.

¶ 11 The day after Vinckus died, Reeze went to All World to "pick up" the skid steer. Ross Gunter, an All World employee, unlocked the storage unit in which the skid steer was located, and Reeze "started it up and moved it." He had it towed to his home by a towing company.

¶ 12 Reeze admitted that he borrowed money from Vinckus several times. The first time was in January 2005, when he borrowed \$4,800. At that time, Reeze executed a promissory note that stated that Vinckus would obtain ownership of Reeze's skid steer if Reeze did not repay the loan within six months. Reeze testified that he repaid the loan within three or four months.

¶ 13 Tammy Vinckus testified that before her father died, she helped him at his businesses,

including All World, but was not employed by him. After her father's death, she took over operations at All World and immediately hired Rone to work as a manager for All World. Rone's managerial position required him "[t]o make sure everything was running correctly."

¶ 14 After Reeze took the skid steer from All World, Tammy found the promissory note Reeze and Vinckus signed in January 2005, showing that Reeze owed Vinckus \$4,800. Tammy did not believe that Reeze ever repaid her father. Tammy said her father "definitely" told her "[t]ime after time" that Reeze did not repay the January 2005 loan.

¶ 15 Tammy received a phone call on April 1, 2008, from Kim Sloan, the manager on duty at All World, telling her that Reeze took the skid steer. Tammy went to All World, talked to Sloan, and then called the police.

¶ 16 In May 2008, Tammy and Rone sent a fax to Officer Sloup from a fax machine at All World that included the forged bill of sale for the skid steer. Tammy testified that most of the handwriting on the bill of sale looked like Rone's but said she did not know it was a forgery.

¶ 17 Rone testified that he began working for All World in the spring of 2008, when Tammy hired him. His position was "[l]ight maintenance," which included repairs, cleaning and similar tasks. Tammy was his supervisor. He denied having any management responsibilities, explaining "[t]here wasn't anybody to manage." The business had two other employees: Kim Sloan, who worked in the office, and Ross Gunter, who worked in the yard. Rone gave instructions to them "[i]n a minor capacity." When he worked at All World, Tammy was the "President/owner" and "was in complete control of the business." He stopped working at All World in the fall of 2008, when he and Tammy broke up.

¶ 18 Rone testified that he and Tammy sent Officer Sloup the January 2005 promissory note

signed by Vinckus and Reeze. Officer Sloup informed them that the promissory note was insufficient to establish that Vinckus owned the skid steer. Officer Sloup indicated that a bill of sale would be enough evidence to prove that Vinckus was the skid steer's owner. As a result, he and Tammy decided "to make the Bill of Sale." It was his idea to create the bill of sale, and Tammy agreed. Julie Vinckus, Walter's former girlfriend, helped him by signing Walter's name to the bill of sale. Rone said he faxed the bill of sale from Vinckus' house to Officer Sloup at 8:37 a.m. on Tuesday, May 13, 2008. He did not believe Tammy was present when he sent the fax.

¶ 19 Rone testified that he did not receive anything in return for falsifying the bill of sale. Tammy did not tell him to forge the bill of sale as an employee of All World and never threatened to fire him if he did not forge the bill of sale. His intent in forging the bill of sale "was to get the skid steer back."

¶ 20 Ross Gunter testified that he was employed at All World from 2000 to 2008. He was hired by Walter Vinckus and worked for him. His duties were security and maintenance. Kim Sloan, who worked in the office at All World, was his supervisor when Walter was gone. Neither Rone nor Tammy were ever his supervisor. He knew Tammy as an acquaintance and knew Rone as Tammy's boyfriend. He thought Reeze was an employee of Walter's, who cut down trees and mowed grass at Walter's home and All World.

¶ 21 Gunter saw Reeze take the skid steer in and out of a container at All World. Reeze initially believed that Reeze owned the skid steer because he used it a lot at Vinckus' house for landscaping and other jobs, and he saw Reeze bring the skid steer to All World on his own trailer. Later on, Vinckus told him that he owned the skid steer because Reeze took out a loan with him and did not pay it back.

¶ 22 On April 1, 2008, Reeze came to All World and asked to see the skid steer, so Gunter opened the container, showed Reeze the skid steer, and then closed the container. When Gunter came back a few minutes later, he saw that Reeze was putting the skid steer on a flatbed. Gunter told Reeze to bring the skid steer back, and Reeze responded, "It's mine and I'll take it." After Reeze left with the skid steer, Sloan called Tammy. Rone came to All World to talk to Gunter about the incident to "see what was going on." Rone asked if Vinckus made a contract with Reeze regarding the skid steer. Gunter said he did not know. The police were called and came to All World. Gunter heard one of the officers tell Tammy that if there was no paperwork showing that the skid steer belonged to Vinckus, Reeze had a right to take it.

¶ 23 James Sloup is a police officer and investigator with the Illinois State Police. In 2008, he worked in the police departments of Joliet and Romeoville and was assigned to Tri-County Auto Theft. He spoke to Tammy Vinckus in May 2008, and she explained that her father loaned money to Reeze in exchange for his skid steer, and as soon as her father died, Reeze came and took it. Sloup told Tammy that without any paperwork showing ownership of the skid steer, "no arrests could be made." Sloup then spoke to Rone, who said that he witnessed Reeze sign a bill of sale that gave Vinckus ownership of the skid steer. Rone said he would locate the bill of sale and send it to Sloup. Rone then faxed a bill of sale to Sloup, along with a cover letter indicating that it was from Rone and Tammy. Sloup assumed the bill of sale was faxed from Vinckus' house because that is where he later picked up the bill of sale.

¶ 24 Handwriting analysis performed on the bill of sale showed that it was a forgery. When Sloup received the results of the handwriting analysis, he called Tammy. Tammy admitted that Rone had forged the bill of sale "to help her out" because he was dating her.

¶ 25 After considering the deposition testimony, the trial court granted All World's motion for summary judgment. Reeze filed a motion to reconsider, which the court denied.

¶ 26 The purpose of summary judgment is to determine whether a genuine issue of material fact exists. *Adames v. Sheahan*, 233 Ill. 2d 276, 295 (2009). Summary judgment is proper only where "the pleadings, depositions and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). In determining whether a genuine issue of material fact exists, the pleadings, depositions, admissions and affidavits must be construed strictly against the movant and liberally in favor of the opponent. *Adames*, 233 Ill. 2d at 295-96. A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts. *Id.* at 296. Summary judgment is a drastic means of disposing of litigation and, therefore, should be granted only when the right of the moving party is clear and free from doubt. *Id.*

¶ 27 For an employer to be vicariously liable for an employee's torts under the doctrine of *respondeat superior*, the torts must have been committed within the scope of the employment. *Pyne v. Witmer*, 129 Ill. 2d 351, 359 (1989). "Summary judgment is generally inappropriate when scope of employment is at issue." *Id.* The question of whether an act is within the scope of an employee's employment is usually left to the jury. *Lulay v. Parvin*, 359 Ill. App. 3d 653, 657 (2005). Only when no reasonable person could conclude from the evidence that an employee was acting within the course of employment should a court hold as a matter of law that the employee was not so acting. *Pyne*, 129 Ill. 2d at 359.

¶ 28 Illinois courts look to the Second Restatement of Agency for guidance in determining whether an employee's acts are within the scope of employment. *Adames*, 233 Ill. 2d at 298-99. The Restatement identifies three general criteria. *Id.* at 299. It provides:

"(1) Conduct of a servant is within the scope of employment if, but only if:

- (a) it is of the kind he is employed to perform;
- (b) it occurs substantially within the authorized time and space limits;
- (c) it is actuated, at least in part, by a purpose to serve the master \* \* \* [.]"

Restatement (Second) of Agency § 228(1) (1958).

All three criteria of section 228 must be met in order to conclude that an employee was acting within the scope of employment. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 165 (2007). It is the plaintiff's burden to show the contemporaneous relationship between the tortious act and the scope of employment. *Adames*, 233 Ill. 2d at 299.

¶ 29 Here, there was conflicting evidence regarding whether Tammy and Rone were acting within the scope of their employment when they created and faxed the forged bill of sale to Sloup, which ultimately led to Reeze's arrest and detention. First, the testimony was inconsistent regarding the location from which the forged bill of sale was faxed. Tammy testified that it was faxed from All World, while Rone and Sloup believed it was faxed from Vinckus' house. The bill of sale was faxed on May 13, 2008, a Tuesday, at 8:37 a.m. If Rone and/or Tammy faxed the bill from All World during working hours, that would suggest that their tortious acts were committed within the scope of their employment. See Restatement (Second) of Agency § 228(1)(b) (1958) ("Conduct of a servant is within the scope of employment if \*\*\* it occurs substantially within the authorized time and space limits").

¶ 30 Additionally, an issue of fact exists regarding whether Rone and Tammy's actions were actuated, at least in part, to benefit All World. Sloup testified that Tammy told him she thought Rone forged the bill of sale because he was her boyfriend and wanted to help her. Rone testified that he forged the bill of sale "to get the skid steer back." Since Vinckus used the skid steer primarily at All World for All World's benefit, Rone and Tammy's decision to forge the bill of sale to "get the skid steer back" may have been actuated at least in part to benefit All World. See Restatement (Second) of Agency § 228(1)(c) (1958) ("Conduct of a servant is within the scope of employment if \*\*\* it is actuated, at least in part, by a purpose to serve the master").

¶ 31 Finally, summary judgment is not appropriate where credibility issues exist because credibility determinations are to be made by the trier of fact. *Nava v. Sears, Roebuck & Co.*, 2013 IL App (1<sup>st</sup>) 122063, ¶ 22. Here, questions of credibility exist, as Rone and Tammy provided conflicting testimony regarding Tammy's knowledge of the falsified bill of sale. Tammy testified that she did not know about the bill of sale before Rone sent it, while Rone testified that Tammy looked at it before he faxed it to Officer Sloup. Since there are questions regarding credibility in this case, the trial court should not have granted summary judgment to All World.

¶ 32 Questions of fact exist regarding whether Tammy and Rone's tortious acts were committed within the scope of their employment; thus, the trial court erred in granting summary judgment to All World.

¶ 33 The judgment of the circuit court of Will County is reversed and the cause is remanded for further proceedings consistent with this decision.

¶ 34 Reversed and remanded.